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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

WRITER'S DIRECT DIAL  
(202) 371-6206

December 23, 1997

**BY HAND**

Ms. Magalie Salas  
Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

**Re: Ex Parte Communications in CC Docket No. 92-297**

Dear Ms. Salas:

On December 22, 1997, Lawrence Sidman and Leo Fitzsimon of Verner, Liipfert, Bernhard, McPherson & Hand, representing Zip Communications Corporation and Steven A. Zecola, Zip's President and Chief Executive Officer met with Jerome Fowlkes, Deputy Chief, Auctions and Industry Analysis Division, Mark R. Bollinger, Legal Advisor, Auctions and Industry Analysis Division, and Matthew I. Moses, Attorney, Auctions and Industry Analysis Division.

The substance of this meeting reflected the issues raised by Zip in a November 24, 1997 letter from Steven A. Zecola to Kathleen O'Brien-Ham regarding the affiliation rules for the upcoming local multipoint distribution service ("LMDS") auction. A copy of that letter is attached. In addition, the attached three-page graphical presentation of various affiliation scenarios under the LMDS rules was distributed at this meeting.

In accordance with Section 1.1206 of the Commission's Rules, an original and one copy of this letter and two copies of the written ex parte presentations submitted on behalf of Zip are being filed with your office.

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Ms. Magalie Salas  
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Any questions concerning this matter should be directed to the undersigned.

Respectfully submitted,

*Lawrence R. Sidman*

Lawrence R. Sidman

Enclosures

cc w/o encl:

A. Jerome Fowlkes  
Mark R. Bollinger  
Matthew I. Moses

**STAMP AND RETURN**



Communications Corporation

November 24, 1997

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**BY HAND DELIVERY**

Kathleen O'Brien-Ham  
Chief, Auctions and Industry Analysis Division  
Federal Communications Commission  
2025 M Street, N.W., Room 5202  
Washington, DC 20554

Federal Communications Commission  
Office of Secretary

Dear Ms. Ham:

This letter concerns the Commission's eligibility rules for bidding credits in the Local Multipoint Distribution Service ("LMDS") auction, scheduled to begin on February 18, 1997. Zip Communications Corporation ("Zip") is a start-up telecommunications company with no revenue which plans to bid in the upcoming auction as a "very small business." As a very small business, Zip is concerned that the Commission's current rules regarding affiliation and the attribution of investors' revenues be as clear as possible so that there is no confusion about entities which are and are not bona fide entrepreneurs qualifying for bidding credits in the auction.

While Zip understands that determinations concerning control and affiliation are fact specific and are to be decided on a case-by-case basis, it nevertheless believes that some clarification is necessary to ensure that only true entrepreneurs receive the benefits of bidding credits. Such clarification would be consistent with the policy expressed recently by Chairman Kennard regarding affiliation rules and would serve to increase competition in the LMDS auction and ultimately would result in increased revenue from the auction.

Zip understands that the Auctions and Industry Analysis staff is currently preparing a general "Questions and Answers" document to address ambiguities in the LMDS rules. Zip requests that the questions addressed in this letter be addressed in that document, or in the alternative, Zip requests a written response to the questions posed herein.

Zip's interests in seeking clarification are twofold. First, Zip seeks to ensure that it adopts a corporate governance and legal structure that qualifies it as a "very small business" under the Commission's rules. Second, Zip seeks to ensure that other applicants claiming entitlement to bidding credits in the LMDS auction are bona fide entrepreneurs. As noted above, by ensuring that only genuine entrepreneurs are able to take advantage of bidding credits, the Commission

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will promote competition in the LMDS auction and increase the revenues it receives from the auction.

In light of these concerns, Zip submits the following questions and Zip's understanding of the answers to the Commission for its consideration in providing applicants guidance in attempting to qualify for entrepreneurial status:

1) Question. What is the definition of controlling principals?

**Zip's Understanding of the Issue.** In identifying the real parties of interest on the Short Form application, the applicant must also identify those individuals or parties that control 50.1% (or more) of the company's stock for purposes of eligibility for the entrepreneurial benefits. Those individuals or entities identified on the short-form as controlling 50.1% of the Company's voting power should be deemed to be the controlling principals.

2) Question. Are individuals and entities identified as controlling principals required to enter into a voting agreement to vote on certain matters in unanimity to ensure that *de facto* and *de jure* control remain with the controlling principals?

**Zip's Understanding of the Issue.** In the absence of a voting agreement among controlling principals, *de facto* control of an entrepreneurial applicant could rest with a non-controlling principal investor. For example, if five controlling principals each own 10.1% of an entity but do not vote together on certain matters affecting the control of the entity, a non-controlling principal investor with 49% of the voting power of the entity would hold *de facto* control of the entity. Therefore, the specified controlling interests must enter into a voting agreement to ensure that *de facto* and *de jure* control remain with the controlling principals.

3) Question. The LMDS rules look to the gross revenues of the applicant, controlling principals of the applicant, and affiliates of the applicant. The PCS rules for the C and F blocks look to the gross revenues of the applicant, together with its affiliates and persons or entities that hold attributable interests in the applicant *and their affiliates*. Is there any significance in the FCC's rules for LMDS omitting affiliates of controlling principals for purposes of determining small business eligibility?

**Zip's Understanding of the Issue.** 47 C.F.R. § 101.1112(h) defines situations where a third party who is not the applicant nor an entity holding controlling interests in the applicant may nonetheless be deemed an affiliate of the applicant.

**Example 1.** Applicant A identifies Person B as a controlling principal in its application. Person B has a controlling interest in Company C. Conclusion: Company C is an affiliate of Applicant A because Company C indirectly has the

Kathleen O'Brien-Ham

November 24, 1997

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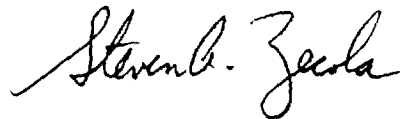
power to control the applicant through Person B. *See* 47 C.F.R. § 101.1112(h)(1)(i).

Example 2. Applicant D identifies Company E as an affiliate through E's ownership of an amount of Applicant D's voting stock which confers some degree of control of Applicant D to E. Company E is an affiliate of Company F. Conclusion: Company F is an affiliate of Applicant D because Company F is indirectly controlled by Company E who has the power to control the applicant.

Example 3. Applicant G identifies Person H as a controlling principal. Persons I and J are identified as a non-controlling investors. Persons, G, H, and I control company LLL. Company LLL has \$40 million in annual revenue. Company LLL has three affiliates with \$80 million in revenue. Conclusion. Applicant G is not a bona fide entrepreneurial company because LLL is affiliated with Person H through an identity of interest with persons J and I (47 C.F.R. § 101.1112(h)(3)) and LLL's three affiliates are affiliates of the applicant because they are controlled by a third party (LLL) who has the power to control the applicant through Person H (47 C.F.R. § 101.1112(h)(1)(iii)).

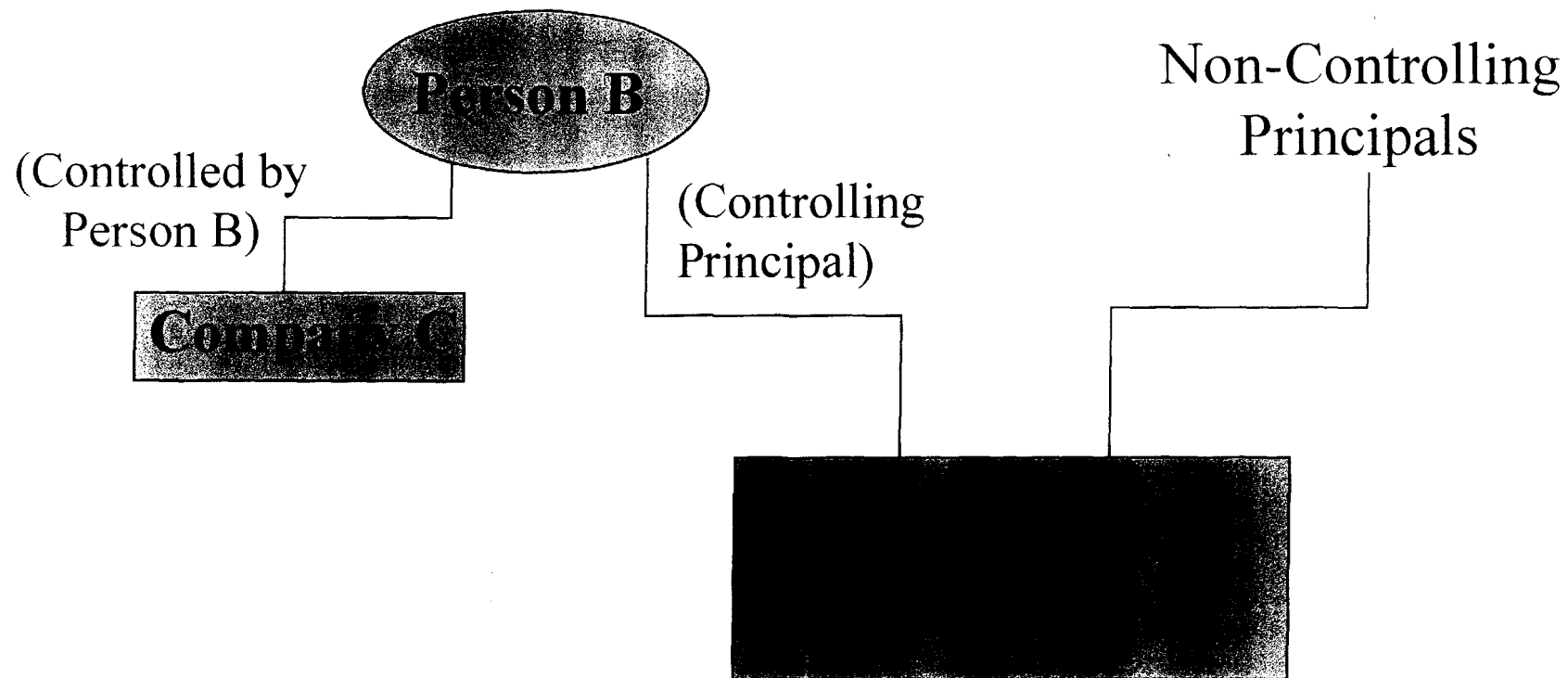
Zip believes that the preceding interpretations would be consistent with the Commission's goal of ensuring that only bona fide entrepreneurs are able to benefit from bidding credits in the LMDS auction. Such a result will promote competition in the LMDS auction and further Congress's desire of promoting wider participation in new telecommunications services by small businesses and minorities.

Sincerely,

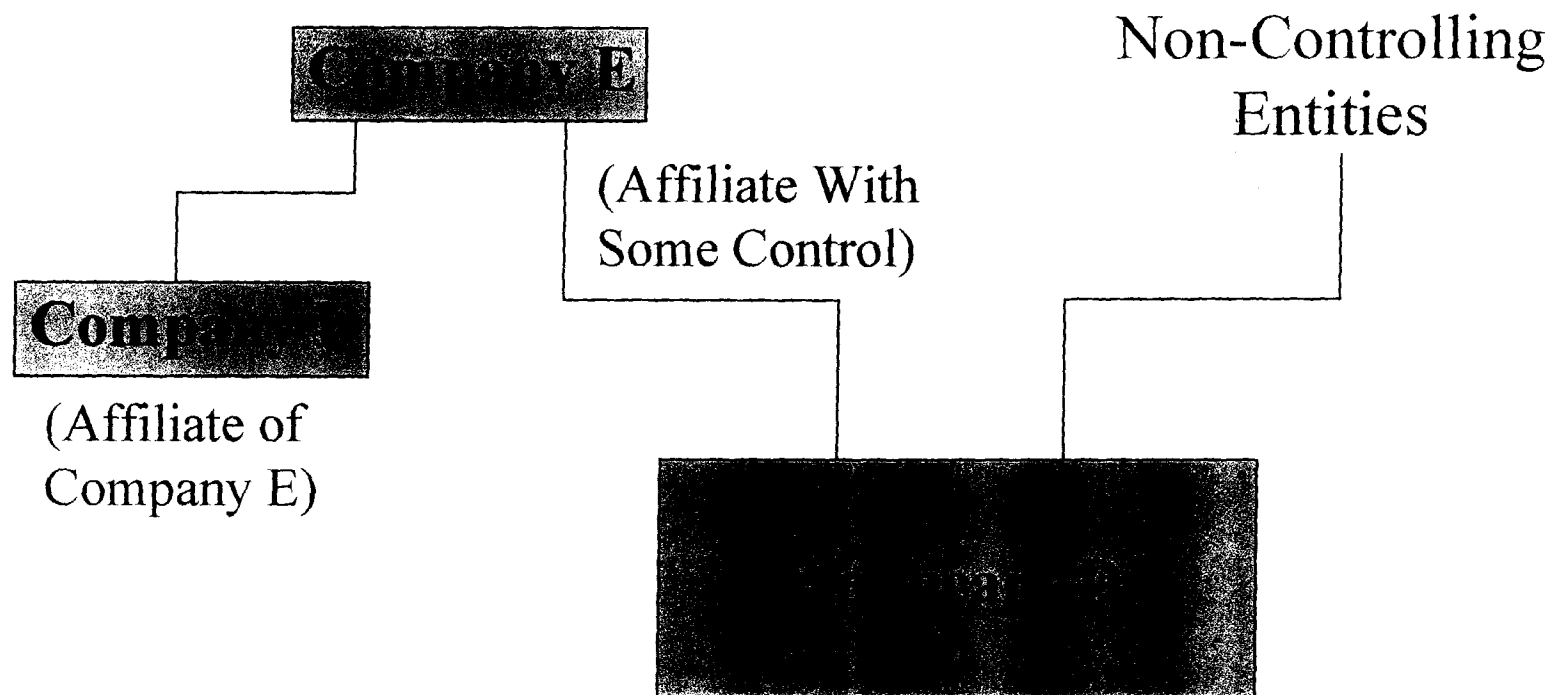


Steven A. Zecola  
President and CEO

# Interpretation 1: Company C is an Affiliate of Applicant A



## Interpretation 2: Company F is an Affiliate of Applicant D



# Interpretation 3: Company LLL and Company XYZ are Affiliates of Applicant G

